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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. 07-0556 MMC
)	
Plaintiff,)	
)	UNITED STATES' SENTENCING
v.)	MEMORANDUM
)	
NICANDRO LOPEZ ARRELLANO,)	Date: November 28, 2007
)	Time: 2:30 p.m.
Defendant.)	

On September 5, 2007, defendant Nicandro Lopez Arrellano pleaded guilty to the sole count of the Indictment, which charges a violation of 8 U.S.C. § 1326. Lopez Arrellano is scheduled to be sentenced by this Court on November 28, 2007. The United States respectfully recommends that this Court sentence defendant to sixty months imprisonment, three years of supervised release, no fine, and a \$100 special assessment.

BACKGROUND

Defendant was born in Mexico and is a citizen of Mexico. (PSR ¶ 3.) He entered the United States without permission in 1989. (PSR ¶ 5.) On September 28, 1998, defendant was

1 convicted of robbery and carjacking in Sonoma County and sentenced to nine years
2 imprisonment. (PSR ¶ 26.) An immigration judge ordered Lopez Arrellano removed from the
3 United States, and defendant was deported to Mexico on February 9, 2006. (PSR ¶ 4.)

4 On January 17, 2007, Louisiana Border Patrol encountered defendant during
5 transportation checks at the Greyhound Bus Station in Port Charles, Louisiana and discovered
6 that defendant was wanted on an outstanding warrant in California. (PSR ¶ 4.) Defendant was
7 then transferred to California and incarcerated in San Quentin for having violated his parole.
8 (PSR ¶ 4.) On August 23, 2007, a grand jury in the Northern District of California returned an
9 indictment charging defendant with one count of violating 8 U.S.C. § 1326, illegal reentry by an
10 alien after deportation.

11 ARGUMENT

12 There is no plea agreement in this case. The Presentence Report (PSR) submitted by the
13 Probation Office recommends a sentence of fifty-seven months, the lowest sentence available
14 under the applicable guidelines range. The United States believes that a sentence within the
15 guidelines range is appropriate in this case. In light of the violence underlying defendant's prior
16 convictions, however, a sentence at the lowest end of the guidelines range is not warranted. The
17 United States respectfully recommends that this Court sentence defendant to sixty months
18 imprisonment, three years of supervised release, no fine, and a \$100 special assessment.

19 A. The Applicable Sentencing Range Under the Guidelines is 57-71 Months.

20 Under the Sentencing Guidelines, defendant's base offense level for the instant offense is
21 8. U.S.S.G. § 2L1.2(a). Defendant's prior conviction for robbery, a felony that is a crime of
22 violence, results in an increase of 16 levels. U.S.S.G. § 2L1.2(b)(1)(A) and application
23 n.1(B)(iii) (defining a "crime of violence" to include, *inter alia*, robbery). Defendant receives a
24 three-point adjustment for acceptance of responsibility. U.S.S.G. § 3E1.1. These figures result
25 in an adjusted offense level of 21. As calculated by the Probation Office, defendant's prior
26 convictions result in five criminal history points. He receives two extra points for having
27 committed the instant offense while under a criminal justice sentence. U.S.S.G. § 4A1.1(d). In
28 addition, defendant incurs an additional point for having committed the instant offense less than

1 two years following his release from imprisonment. U.S.S.G. § 4A1.1(e). Defendant, therefore,
2 receives 8 criminal history points, which places him in criminal history category IV.
3 U.S. Sentencing Guidelines Manual ch. 5, pt. A. Combining these figures yields a sentencing
4 range of 57-71 months under the guidelines. *Id.*

5 B. A 60-Month Sentence is Reasonable in this Case.

6 The United States agrees with the recommendation of the Probation Office that there
7 exist no factors in this case that would warrant a departure from the applicable advisory
8 guidelines range. (PSR ¶ 57.) Assuming the Court agrees with this conclusion, the principal task
9 for this Court lies in determining a reasonable sentence in light of the sentencing factors
10 articulated in 18 U.S.C. § 3553(a); *United States v. Reina-Rodriguez*, 468 F.3d 1147, 1158 (9th
11 Cir. 2006).

12 As the PSR notes, defendant has “led a troubled life.” (PSR at Sentencing
13 Recommendation.) Indeed, defendant’s prior convictions demonstrate that defendant has a
14 persistent history of violent behavior toward others. In defendant’s first conviction for battery,
15 which he incurred at the age of 17, the minor female victim reported that defendant struck her in
16 the face with a closed fist. (PSR ¶ 24.) Just one year later, defendant was again convicted of
17 battery of a female victim. In that case, the victim reported that the defendant struck her in the
18 face with his fist and that she lost consciousness. (PSR ¶ 25.) Less than one year after this
19 second battery conviction, defendant was convicted of carjacking and of robbery. In that case,
20 the victim reported that the defendant hit him on the head—possibly with a rock—until the victim
21 lost consciousness. (PSR ¶ 26.) The victim sustained a depressed skull fracture to the right side
22 of his head. The victim’s injuries were so severe that he had to have a metal plate implanted in
23 the back of his skull and surgical pins inserted into his fingers. In addition, defendant stole the
24 victim’s car. After the crime, the victim continued to suffer from headaches and persistent
25 nightmares. *Id.*

26 Having incurred two battery convictions, a carjacking conviction, and a robbery
27 conviction in less than two years, defendant was sentenced to nine years imprisonment for the
28 carjacking offense. He served approximately five and a half years of this sentence and was then

1 deported to Mexico on February 9, 2006. Within the following year, defendant had already
2 returned to the United States and been found by U.S. officials.

3 That defendant committed the instant offense so quickly after his deportation and while
4 he was still on parole is reflected in defendant's criminal history category and, therefore, his
5 guidelines range. Nevertheless, the violence of defendant's past conduct—and the rapidity with
6 which he attacked his victims—is not. Because one of the purposes of sentencing is to reflect the
7 specifics of defendant's individual case and to avoid disparities in sentencing, 18 U.S.C. §
8 3553(a)(6), the United States believes that a sentence at the lowest end of the applicable
9 guidelines range is not warranted in this case.

10 On the other hand, defendant does not have a long record of immigration violations. The
11 instant offense is his first conviction for illegal reentry. In light of this fact, the United States
12 believes that a sentence for sixty months is not unreasonable. This sentence serves the twin
13 purposes of punishing defendant for his past conduct and of deterring potential future violators of
14 the immigration laws. It is reasonable under 18 U.S.C. § 3553(a).

15 For these reasons, the United States respectfully asks this Court to sentence defendant to
16 sixty months imprisonment, three years of supervised release, and a \$100 special assessment

17
18 DATED: November 20, 2007

Respectfully submitted,

19 SCOTT N. SCHOOLS
20 United States Attorney

21 _____/s/_____

22 ALLISON MARSTON DANNER
23 Assistant United States Attorney